**Local 1242, International Longshoremen's Association, AFL–CIO; Local 1242-1 International Longshoremen's Association, AFL–CIO; Local 1291 International Longshoremen's Association, AFL–CIO; Local 1566, International Longshoremen's Association, AFL–CIO; Local 1332, International Longshoremen's Association, AFL–CIO; Local 1332-A, International Longshoremen's Association, AFL–CIO *and* Holt Hauling and Warehousing System, Inc. *and* Trans Ocean Maritime Services, Inc. and Teamsters Local 676.** Cases 4-CD-873 and 4-CD-874

December 30, 1994

## DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

The charges in this Section 10(k) proceeding were filed on August 27, 1993, and August 31, 1993, by Holt Hauling and Warehousing System, Inc. (Holt) and Trans Ocean Maritime Services, Inc. (the Employer or Trans Ocean), respectively, alleging that the Respondent, Locals 1242, 1242-1, 1291, 1566, 1332, and 1332-A, International Longshoremen's Association (ILA), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Teamsters Local 676. The hearing was held on November 15, 1993, before Hearing Officer Henry R. Protas.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

### I. JURISDICTION

Holt Hauling and Warehousing System, Inc., a Pennsylvania corporation with a place of business in Gloucester, New Jersey, is engaged in the business of owning and leasing property and owns the Gloucester Marine Terminal. During the 12 months preceding the hearing, Holt performed services valued in excess of $50,000 for customers located outside the State of New Jersey and has purchased and received materials and supplies valued in excess of $50,000 from outside the State of New Jersey. Trans Ocean Maritime Services, Inc., a Delaware corporation with a place of business in Gloucester, New Jersey, is engaged in warehousing and stevedoring. During the 12 months preceding the hearing, Trans Ocean has performed services valued in excess of $50,000 for customers located outside the State of New Jersey. We find that Holt and Trans Ocean are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that ILA and Teamsters Local 676 are labor organizations within the meaning of Section 2(5) of the Act.

### II. THE DISPUTE

#### A. *Background and Facts of Dispute*

The Employer has a collective-bargaining agreement with Teamsters Local 676 covering dock work at Pier 7 and 7A of the Gloucester Marine Terminal. From 1967 to July 1992, members of ILA locals had performed the disputed work at those piers, most recently for Holt Cargo Systems (HCS), which stopped operating the piers in July 1992. In July 1993, Holt leased the piers to the Employer.

On August 26 and October 24, 1993, the ILA locals picketed the piers. Members of Teamsters Local 676 have continued to perform the disputed dock work.

#### B. *Work in Dispute*

The disputed work is the loading and unloading of ships; moving and handling of cargo on the pier; mechanical and maintenance work; clerking and checking of cargo coming on and off ships or moved on the pier; cargo repairs; lashing; carpentry and timekeeping work at Piers 7 and 7A at the Gloucester Marine Terminal in Gloucester, New Jersey.

#### C. *Contentions of the Parties*

The Employer claims that the work in dispute is covered by its current collective-bargaining agreement with Teamsters, and that it is therefore contractually obligated to assign the dock work to employees represented by the Teamsters.

The ILA locals contend that they have a valid work preservation dispute with Holt and HCS, and that Holt, rather than either the ILA locals or the Teamsters, created the dispute. They further contend that the picketing directed at the Employer is lawful area-standards picketing.

#### D. *Applicability of the Statute*

At various times between October 1992 and June 1993, representatives of the ILA locals met with representatives of HCS and, during these meetings, objected to the leasing of Piers 7 and 7A to any entity that did not employ employees represented by the ILA locals. Specifically, at a June 9, 1993 meeting, ILA Local 1566 President James Paylor stated that, if the piers were leased to a nonsignatory employer, there would be a lot of trouble, and the entire port would be shut down. At a later meeting on August 17, 1993, ILA local representatives were told by HCS that the

lessee of the piers was the Employer. In response, the ILA representatives stated that they ''weren't going to allow Teamsters over there,'' and that there would be ''a lot of trouble,'' and that the port would be shut down. The ILA locals picketed Piers 7 and 7A on August 26 and October 24, 1993. The parties stipulated that there is no voluntary method of resolving the jurisdictional dispute that would be binding on all parties.

The ILA locals contend that this is not a jurisdictional dispute, but rather a separate and distinct contract action that involves only it and HCS. We reject this contention. The ILA locals rely on *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818 (1986), affd. 827 F.2d 521 (9th Cir. 1987), where the real dispute was between the employer who subcontracted the work and the union representing its employees over the interpretation of a work preservation provision in its collective-bargaining agreement. The Union did not claim the work if the employer was contractually entitled to subcontract it. Here, however, two unions have collective-bargaining agreements with two employers, and each union asserts that its contract covers the same work. We conclude that there are competing claims to disputed work by rival groups of employees.[1]

The ILA locals have at all times claimed the work in dispute. As described above, the ILA locals repeatedly threatened ''trouble'' and closing of the pier if Piers 7 and 7A were leased to any entity that did not employ employees represented by the ILA locals and, shortly thereafter, on August 26 and October 24, 1993, picketed Piers 7 and 7A. Even assuming that an object of the ILA locals' picketing was the payment of area-standards wages and benefits, we find reasonable cause to believe that another object was the reassignment of the disputed work to employees they represent. See *Electrical Workers IBEW Local 701 (Federal Street Construction)*, 306 NLRB 829, 831 (1992).

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

### E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

#### 1. Collective-bargaining agreements

The Employer and Teamsters Local 676 are parties to a collective-bargaining agreement effective by its terms June 17, 1993, to June 16, 1998. The Employer does not have a collective-bargaining relationship with the ILA locals. We find that this factor favors assigning the work in dispute to employees represented by Teamsters Local 676.

#### 2. Employer preference and past practice

The Employer, in accordance with its preference, assigned the work in dispute to employees represented by Teamsters Local 676. There is no evidence to indicate that the Employer has in the past assigned the disputed work to employees represented by the ILA locals. We find that this factor favors awarding the work in dispute to employees represented by Teamsters Local 676.

#### 3. Area practice

Since July 1993, employees represented by Teamsters Local 676 have performed stevedoring and warehousing work at Piers 7 and 7A of the Gloucester Marine Terminal. From 1967 to July 1993, employees represented by the ILA locals had performed that work at these piers. The practice elsewhere in the Port of Philadelphia is mixed. We find that this factor does not favor awarding the work in dispute to either group of employees.

#### 4. Relative skills

The evidence shows that employees represented by both Unions possess the requisite skills and training to perform the work in dispute. This factor does not favor awarding the work in dispute to either group of employees.

#### 5. Economy and efficiency of operations

The Employer's general manager Jeffery Gillespie testified that the Employer employs a regular crew of 16 employees represented by the Teamsters, who may be moved freely within job classifications at management discretion, which the Employer believes is economical and efficient. The ILA locals' contractual manning requirements do not permit free movement among the various crafts within the unit. This factor favors awarding the work to employees represented by the Teamsters.

[1] In support of its work-preservation defense, the ILA locals argue that Holt is an alter ego of HCS and is therefore bound by a provision of HCS's collective-bargaining agreement with the ILA locals prohibiting the ''leasing, subleasing or any other conduct which results in the loss of traditional ILA jurisdiction over [work at Piers 7 and 7A].'' There is no evidence in the record to support a finding that the companies are alter egos.

### 6. Certifications

Neither Teamsters Local 676 nor the ILA have been certified by the Board as the collective-bargaining representative of the Employer's employees. This factor does not favor awarding the work in dispute to either group of employees.

### Conclusions

After considering all the relevant factors, we conclude that employees of Trans Ocean Maritime Services, Inc., represented by Teamsters Local 676, are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's collective-bargaining agreement with Teamsters Local 676, the Employer's preference, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Teamsters Local 676, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

## DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Trans Ocean Maritime Services, Inc., represented by Teamsters Local 676 are entitled to perform the loading and unloading of ships; moving and handling of cargo on the pier, mechanical and maintenance work; clerking and checking of cargo going on and off ships or moved on the pier; cargo repairs; lashing; carpentry and timekeeping work at Piers 7 and 7A at the Gloucester Marine Terminal in Gloucester, New Jersey.

2. Locals 1242, 1242-1, 1291, 1566, 1332 and 1332-A, International Longshoremen's Association, AFL–CIO are not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Trans Ocean Maritime Services, Inc. to assign the disputed work to employees they represent.

3. Within 10 days from this date, Locals 1242, 1242–1, 1291, 1566, 1332, and 1332–A International Longshoremen's Association, AFL–CIO shall notify the Regional Director for Region 4 in writing whether they will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.